

STATE OF MICHIGAN
COURT OF APPEALS

DAVID L. BUDDE,

Petitioner-Appellee/Cross-
Appellant,

V

MICHIGAN DEPARTMENT OF CONSUMER &
INDUSTRY SERVICES,

Respondent-Appellant/Cross-
Appellee.

UNPUBLISHED
September 14, 2001

No. 221251
Wayne Circuit Court
LC No. 99-905867-AA

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

HOEKSTRA, J., (*concurring in part and dissenting in part*).

I agree with the majority's resolution of all of the issues raised on appeal, except whether the sanction that the board imposed pursuant to MCL 339.602 was arbitrary and an abuse of discretion. The board in this case, as the majority notes, imposed a penalty that was virtually the most harsh that the statute provides. When doing so, the board offered no explanation. The board imposed its sanction against a backdrop where the hearing examiner, who actually heard the witnesses and evaluated their credibility, and upon whom the board relied without question for its assessment of the merits of the alleged violation, recommended that petitioner's certificate not be suspended or revoked. Also, the circumstances that gave rise to the complaint were highly unusual. The circumstances here suggest that the complainant in this case was not harmed and that is a relevant factor to be considered when fashioning a sanction.¹ Taken together, the circumstances of this case lead me to conclude that the sanction in this case may be arbitrary and an abuse of discretion.

However, I note that this is an issue that the trial court did not reach because of its finding that no violation was established. Because we have reversed that finding, the nature of the sanction is now at issue. I believe the proper course at this point is to remand the matter to the trial court so that it may address the sanction that the board imposed. Further, I believe it would be appropriate for the trial court to remand the matter back to the board with instructions to state the grounds on which it relied for imposing such a harsh sanction in light of the peculiar

¹ The majority acknowledges that harm to the complainant is a factor that "might be" relevant.

circumstances of this case. See MCR 7.105(m). On these facts, any reviewing court ought to have before it the rationale of the board for imposing a revocation under these circumstances.

/s/ Joel P. Hoekstra